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U.S.A. HEALTH, INC., AND L. SCOTT HOLMES  
20

21 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
22 San Francisco Division

23 FEDERAL TRADE COMMISSION,

24 Plaintiff,

25 v.

26 MEDLAB, INC., et al.,

27 Defendants.  
28

No. CV-08-00822 SI

STIPULATION AND [PROPOSED]  
PROTECTIVE ORDER  
REGARDING CONFIDENTIAL  
TREATMENT OF DOCUMENTS  
PRODUCED IN DISCOVERY

1 To expedite the flow of discovery material, facilitate the prompt resolution of disputes  
2 over confidentiality, ensure that protection is afforded only to material so designated, and protect  
3 personally identifiable and private information, Plaintiff Federal Trade Commission ("FTC") and  
4 Defendants Medlab, Inc., Pinnacle Holdings, Inc., Metabolic Research Associates, Inc., U.S.A.  
5 Health, Inc., and L. Scott Holmes hereby stipulate to and request that the Court enter an Order  
6 requiring that:

7 1. Documents, interrogatory answers, responses to requests for admission,  
8 deposition testimony, deposition exhibits, recorded or graphic matter, and other materials,  
9 tangible objects, and information (hereinafter "MATERIALS") that contain trade secret or other  
10 confidential research, development, technical, commercial, financial, or private information,  
11 personal data identifiers listed in Local Rule 3-17(a), or PERSONALLY IDENTIFIABLE  
12 INFORMATION (defined in this paragraph, below) produced, provided, or filed in this action by  
13 any party or non-party, including such MATERIALS produced in response to any compulsory  
14 process served before the entry date of this Order or to any Federal Trade Commission Civil  
15 Investigative Demand, may be designated CONFIDENTIAL by any party, and thereby made  
16 subject to the provisions of this Order. MATERIALS independently discovered by a receiving  
17 party are not subject to the provisions of this Order. PERSONALLY IDENTIFIABLE  
18 INFORMATION includes an individual's social security number, or an individual's name or  
19 address or phone number in combination with one or more of the following: date of birth;  
20 driver's license number or other state identification number, or a foreign country equivalent;  
21 passport number; financial account number; or credit card or debit card number. For purposes of  
22 this Order, PERSONALLY IDENTIFIABLE INFORMATION also includes medical records  
23 and other individually identifiable health information relating to the past, present, or future  
24 physical or mental health or condition of an individual, and to the provision of or payment for  
25 health care to an individual.

26 2. A designation that MATERIALS are CONFIDENTIAL shall constitute a  
27 representation by the designating party, in good faith and after careful determination, that the  
28 MATERIALS so designated are eligible for such designation pursuant to Paragraph 1.

1           3.     PERSONALLY IDENTIFIABLE INFORMATION shall be afforded all the  
2     protections of this Order afforded to other CONFIDENTIAL MATERIALS, but also shall be  
3     secured by any receiving party in such a manner as to minimize the possibility of unintentional  
4     disclosure, including the physical storage thereof in a secure area or law office, the electronic  
5     storage thereof on a password-protected computer or system which may be accessed only by  
6     persons qualified to have access to the PERSONALLY IDENTIFIABLE INFORMATION  
7     pursuant to the terms of this Order, and the shipment thereof only to other qualified persons by a  
8     trackable method with restricted delivery to such qualified persons.

9           4.     During the course of a deposition of a party or as a result of an interrogatory or a  
10    request for admission, if a response calls for the disclosure of CONFIDENTIAL MATERIALS,  
11    to the extent possible, the responding party should so designate such MATERIALS as  
12    CONFIDENTIAL in responding to the questions, and if the CONFIDENTIAL MATERIALS are  
13    elicited during a deposition, the party shall instruct the court reporter that the answers to the  
14    questions, along with any questions that incorporate CONFIDENTIAL MATERIALS, should be  
15    marked "CONFIDENTIAL" in the transcript. Any party may, on the record of any deposition or  
16    by written notice to counsel for all parties no later than thirty days after the deposition transcript  
17    is first made available to that party, designate portions thereof as CONFIDENTIAL under the  
18    terms of this Order. Until the end of such thirty-day period, the deposition transcript will be  
19    deemed to be designated CONFIDENTIAL in its entirety under the terms of this Order.  
20    Thereafter, only those portions of the deposition transcript designated CONFIDENTIAL shall be  
21    so treated, except that, to the extent possible, all copies of deposition transcripts that contain  
22    CONFIDENTIAL MATERIALS shall be prominently marked "CONFIDENTIAL" on the cover  
23    thereof. This designation may be accomplished either (a) by marking "CONFIDENTIAL" every  
24    page of the transcript that contains CONFIDENTIAL MATERIALS or (b) by notifying all  
25    parties of the transcript page and line numbers of the pages deemed to be CONFIDENTIAL, and  
26    marking the first and last such pages of such ranges as "CONFIDENTIAL - START" and  
27    "CONFIDENTIAL - END," respectively. Transcript pages designated CONFIDENTIAL by  
28    either method of designation shall be entitled to the same protections under this Order.

1           5.     With respect to all MATERIALS provided for inspection by a party's counsel, all  
2 CONFIDENTIAL MATERIALS shall be stamped "CONFIDENTIAL" by the party desiring  
3 such designation, or otherwise designated by such party in writing, within thirty days of  
4 production. Until the end of such thirty-day period, the document production will be deemed to  
5 be designated CONFIDENTIAL in its entirety under the terms of this Order. A designation of  
6 CONFIDENTIAL by stamping or labeling need not be made until after counsel for the  
7 inspecting party has inspected the MATERIALS and selected MATERIALS to be copied.  
8 Making MATERIALS available for inspection shall not constitute a waiver of any claim to  
9 designate such MATERIALS as CONFIDENTIAL, and all MATERIALS provided for  
10 inspection by a party's counsel shall be treated as though designated CONFIDENTIAL at the  
11 time of inspection.

12           6.     Any party, within thirty days of the party's receipt of any MATERIALS in this  
13 matter from any non-party in response to compulsory process, may designate as  
14 CONFIDENTIAL under the terms of this Order any MATERIALS that are produced in response  
15 to compulsory process served on a non-party. This designation may be accomplished either  
16 (a) by marking every page of CONFIDENTIAL MATERIALS "CONFIDENTIAL," or (b) by  
17 notifying all parties of the Bates ranges of MATERIALS deemed CONFIDENTIAL, and  
18 marking the first and last such pages of such ranges as "CONFIDENTIAL - START" and  
19 "CONFIDENTIAL - END," respectively. MATERIALS designated CONFIDENTIAL by either  
20 method of designation shall be entitled to the same protections under this Order. Prior to the  
21 expiration of the thirty-day period following the respective parties' receipt of such  
22 MATERIALS, any such MATERIALS produced will be deemed to be CONFIDENTIAL in their  
23 entirety under the terms of this Order. Thereafter, only those portions of the MATERIALS  
24 designated CONFIDENTIAL through either of the above-described methods shall be so treated.

25           7.     CONFIDENTIAL MATERIALS, including any writing or communication  
26 reproducing, paraphrasing, or otherwise disclosing such CONFIDENTIAL MATERIALS, shall  
27 not be used for any purpose by the receiving party except for purposes in connection with this  
28 litigation. Notwithstanding the foregoing, nothing in this Order shall impose any restrictions on

1 the use or disclosure of CONFIDENTIAL MATERIALS by the FTC as provided by: (1) the  
2 FTC's Rules of Practice and any cases construing them; (2) Sections 6(f) and 21 of the Federal  
3 Trade Commission Act and any cases construing them; and (3) any other legal obligation  
4 imposed upon the FTC, except that the FTC shall provide notice to the Defendants of any such  
5 disclosure where permitted by law, in advance of such disclosure.

6 8. CONFIDENTIAL MATERIALS, including any writing or communication  
7 reproducing, paraphrasing, or otherwise disclosing such CONFIDENTIAL MATERIALS, shall  
8 not be disclosed to any person by the receiving party except to the following persons:

9 (a) The Defendants in this action, including the executives or other personnel  
10 of the Defendants who are participants with respect to policy decisions for the trial or pretrial  
11 preparations with reference to this action and any personnel having a good-faith, reasonable need  
12 for obtaining access to the CONFIDENTIAL MATERIALS.

13 (b) FTC Commissioners and other employees of the FTC (including  
14 consultants not covered under Subparagraph 8(c) below), the parties' respective counsel of  
15 record in this action, including the associates and paralegal, secretarial, clerical, and other  
16 regular and temporary employees of such counsel assisting such counsel and including  
17 employees of any firm retained to reproduce or store the CONFIDENTIAL MATERIALS for  
18 use in accordance with this Order.

19 (c) The independent experts or consultants retained or consulted by the parties  
20 in this action, including the employees of such experts or consultants who are assigned to assist  
21 such experts or consultants.

22 (d) Any person who prepared or originated the CONFIDENTIAL  
23 MATERIALS, who is indicated on the face of the CONFIDENTIAL MATERIALS as a  
24 recipient of a copy thereof, who otherwise legitimately received a copy of the CONFIDENTIAL  
25 MATERIALS other than through a document production in this litigation, or who is a witness or  
26 witness's counsel at deposition or trial where the CONFIDENTIAL MATERIALS are  
27 reasonably related to the testimony of such witness, and court reporters and persons preparing  
28 transcripts of testimony.

1 (e) The Court and related officials involved in this litigation or any other  
2 proceeding in which the CONFIDENTIAL MATERIALS are used, including judges,  
3 magistrates, commissioners, referees, jurors, and other personnel of the Court; provided,  
4 however, that any MATERIALS designated CONFIDENTIAL and lodged or filed with the  
5 Court are filed in accordance with the procedures for filing under seal as described in Paragraph  
6 11 below.

7 (f) Any person designated by the Court in the interest of justice, upon such  
8 terms as the Court deems proper.

9 9. Prior to disclosing CONFIDENTIAL MATERIALS to any person listed in  
10 Subparagraphs 8(c) or 8(d), the receiving party shall:

11 (a) provide such person with a copy of this Order; and  
12 (b) obtain from such person a signed statement in the form attached hereto as  
13 Exhibit A. Such statement shall be retained by counsel for the party and need not be filed with  
14 the Court or served upon opposing counsel unless requested for good cause or ordered by the  
15 Court.

16 10. Any person listed in Subparagraphs 8(a) through 8(d) who receives  
17 CONFIDENTIAL MATERIALS shall:

18 (a) read this Order;  
19 (b) use such CONFIDENTIAL MATERIALS only for purposes permitted by  
20 this Order; and  
21 (c) not disclose or discuss such CONFIDENTIAL MATERIALS other than as  
22 permitted by this Order.

23 11. All CONFIDENTIAL MATERIALS that are lodged or filed with the Court,  
24 including any pleading or other document reproducing, paraphrasing, or otherwise disclosing  
25 such CONFIDENTIAL MATERIALS, shall be lodged or filed pursuant to this Order in a sealed  
26 envelope or other appropriate sealed container marked in the manner required by the Court and  
27 Local Rule 79-5 for lodging and filing such MATERIALS under seal. Nothing contained in this  
28 Order shall be construed to limit the requirements of Local Rule 3-17(a) to redact, exclude, or

1 submit under seal any information or documents described in that rule.

2 12. Nothing contained herein shall be construed to prejudice any party's right to use  
3 any CONFIDENTIAL MATERIALS or other information for any purpose in this litigation.

4 13. Nothing contained herein shall be construed to affect in any way the admissibility  
5 of any document, testimony, or other evidence at trial. This Order has no effect upon, and its  
6 scope shall not extend to, any party's use of its own discovery MATERIALS.

7 14. Any party who has designated any MATERIALS as CONFIDENTIAL pursuant  
8 to this Order may consent to the removal of such designation by so notifying counsel for the  
9 other parties in writing.

10 15. Any party may challenge a designation of CONFIDENTIAL and request removal  
11 of the MATERIALS or their designation as CONFIDENTIAL as follows:

12 (a) The party seeking such removal shall give the party who designated the  
13 MATERIALS as CONFIDENTIAL written notice thereof specifying the MATERIALS as to  
14 which such removal is sought and the reason for the request.

15 (b) If the parties cannot reach agreement concerning the matter within fifteen  
16 days after such notice, then the party requesting the removal of such MATERIALS or their  
17 designation as CONFIDENTIAL may file and serve a motion for an order of the Court directing  
18 that the MATERIALS or their designation as CONFIDENTIAL be removed.

19 (c) For CONFIDENTIAL MATERIALS other than PERSONALLY  
20 IDENTIFIABLE INFORMATION, the party desiring to maintain their designation as  
21 CONFIDENTIAL shall have the burden of establishing grounds for such treatment. The burden  
22 of establishing that any PERSONALLY IDENTIFIABLE INFORMATION should not be  
23 considered CONFIDENTIAL shall be upon the party seeking to remove the designation.

24 16. Neither the taking of any action in accordance with the provisions of this Order,  
25 nor the failure to object thereto shall be construed as a waiver of any claim or defense in this  
26 action. Moreover, the failure to designate MATERIALS in accordance with this Order and the  
27 failure to object to a designation at a given time shall not preclude the filing of a motion at a later  
28 date seeking to impose such designation or challenging the propriety thereof. The entry of this



1 Order shall neither be construed as a waiver of any right to object to the furnishing of  
2 MATERIALS in response to discovery nor relieve any party of the obligation of producing  
3 MATERIALS in the course of discovery.

4 17. If a party through inadvertence produces or provides discovery of any  
5 MATERIALS without designating them as CONFIDENTIAL as provided in this Order, the  
6 party shall promptly give written notice to the receiving party that the MATERIALS are  
7 CONFIDENTIAL and should be treated in accordance with this Order. The receiving party shall  
8 treat such MATERIALS as CONFIDENTIAL from the date that such notice is received.  
9 Disclosure of such MATERIALS prior to receipt of such notice to persons not authorized to  
10 receive CONFIDENTIAL MATERIALS shall not be deemed a violation of this Order; however,  
11 those persons to whom disclosure was made are to be advised that the MATERIALS disclosed  
12 are CONFIDENTIAL and must be treated in accordance with this Order.

13 18. In the case of any accidental or inadvertent disclosure of CONFIDENTIAL  
14 MATERIALS or any other disclosure not in accordance with this Order, counsel for the party  
15 responsible for the disclosure shall promptly notify counsel for the party who designated the  
16 MATERIALS as CONFIDENTIAL (or the individual whose PERSONALLY IDENTIFIABLE  
17 INFORMATION was disclosed) of the disclosure and make every effort to prevent further  
18 disclosure, including attempting to retrieve all copies of the CONFIDENTIAL MATERIALS  
19 from the recipients thereof, and attempting to secure the agreement of the recipients not to  
20 further disseminate the CONFIDENTIAL MATERIALS in any form.

21 19. At the time that any consultant, expert, or other person retained to assist counsel  
22 in this action concludes participation in this action, such person shall return to counsel all copies  
23 of MATERIALS or portions thereof designated CONFIDENTIAL that are in the possession of  
24 such person, together with notes, memoranda, or other papers reproducing, paraphrasing, or  
25 otherwise disclosing CONFIDENTIAL MATERIALS, or certify as to their destruction.  
26 Furthermore, within thirty days after the completion of this litigation all CONFIDENTIAL  
27 MATERIALS, including any writing or communication reproducing, paraphrasing, or otherwise  
28 disclosing such CONFIDENTIAL MATERIALS, shall be collected by counsel for the receiving



1 party and either destroyed or returned to the party or non-party who produced, provided, or filed  
2 the MATERIALS; provided, however, that attorney work product or pleadings reproducing,  
3 paraphrasing, or otherwise disclosing CONFIDENTIAL MATERIALS may be retained in  
4 counsel's files subject to the other paragraphs of this Order, providing that such  
5 CONFIDENTIAL MATERIALS shall not be used for any purpose outside of those permitted by  
6 this Order. For purposes of this Order, this action shall be considered completed when the entire  
7 proceeding has been resolved and any related orders have become final and non-appealable.

8         20. All parties and other persons who receive CONFIDENTIAL MATERIALS shall  
9 be under a continuing duty not to disclose such MATERIALS, except as permitted in this Order,  
10 and this duty shall continue in full force and effect after the completion of this litigation.

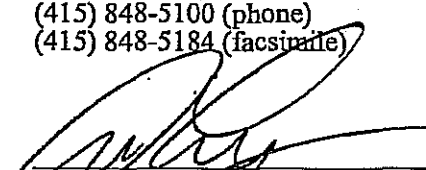
11         21. In the event additional persons or entities become parties to this litigation, they  
12 shall be bound by this Order unless and until a different Protective Order is entered with respect  
13 to such additional parties.

1 IT IS SO STIPULATED.

2  
3 DATED: August 5, 2008

  
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6  
7  
8  
9 DATED: August 5, 2008

  
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18 Attorneys for Defendants  
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1           **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

2  
3           DATED: \_\_\_\_\_



4           HONORABLE SUSAN ILLSTON  
5           United States District Judge

## EXHIBIT A

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MEDLAB, INC., et al.,

Defendants.

No. CV-08-00822 SI

ACKNOWLEDGMENT OF  
STIPULATION AND  
PROTECTIVE ORDER  
REGARDING CONFIDENTIAL  
TREATMENT OF DOCUMENTS  
PRODUCED IN DISCOVERY

This acknowledges that I have read the Protective Order entered in the above-captioned case on [fill in the date the Court entered the Protective Order] and I agree to be bound by the terms of that Protective Order.

As a condition precedent to my receipt or review of any MATERIALS designated CONFIDENTIAL pursuant to that Protective Order, I hereby agree that the Protective Order shall be deemed to be directed to and shall include me, and I shall observe and comply with all of its provisions.

I further understand and agree that I am not permitted to use, and I shall not use, CONFIDENTIAL MATERIALS for any purpose other than those permitted under this Order.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

This is to certify that on August 5, 2008, I served true and correct copies of the attached:

• Stipulation and [Proposed] Protective Order Regarding Confidential Treatment of Documents Produced in Discovery  
by filing the above documents with the Court's ECF System and e-mailing the documents to:

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Attorneys for Defendants

I swear under penalty of perjury that the foregoing is true and correct. Executed this August 5, 2008, at San Francisco, California.

/s/ Evan Rose

Evan Rose